

Kelly J. C. Gallinger
BROWN LAW FIRM, P.C.
315 North 24th Street
P.O. Box 849
Billings, MT 59103-0849
Tel. (406) 248-2611
Fax (406) 248-3128
kgallinger@brownfirm.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

DANIAL FLOYD,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE
CO. OF ILLINOIS; PENNY HART, an
Individual; and DOES B thru Z,

Defendants.

Case No.: _____

**DEFENDANTS ZURICH
AMERICAN INSURANCE CO. OF
ILLINOIS' AND PENNY HART'S
NOTICE OF REMOVAL TO U.S.
DISTRICT COURT**

TO: THE HONORABLE UNITED STATES DISTRICT COURT OF THE
DISTRICT OF MONTANA, BILLINGS DIVISION

COMES NOW Defendants Zurich American Insurance Company of Illinois
and Penny Hart (hereinafter collectively "Defendants") and hereby give notice to the
above named Court for removal of this cause from the Montana Thirteenth Judicial
District Court, Yellowstone County, Cause No. DV 17-1264, to the above named
United States District Court, Billings Division, pursuant to 28 U.S.C. § 1446, and
for its grounds for removal allege as follows:

1. That the action is a civil action filed by Plaintiff seeking monetary damages, commenced on August 23, 2017, by the filing of a Complaint and Demand for Jury Trial (hereinafter “Complaint”) in the Montana Thirteenth Judicial District Court, Yellowstone County. A copy of the Complaint is attached as Exhibit A, and a copy of the Summons is attached as Exhibit B. On August 24, 2017, Service of Process was delivered on Penny Hart, which constituted the first notice Defendants had of this action. Service included a copy of the attached Complaint and Summons.

2. That Defendants deny the allegations contained within Plaintiff’s Complaint and Demand for Jury Trial, and file this Notice of Removal without waiving any defenses, exceptions, or obligations that may exist in their favor in either state or federal court.

3. That upon information and belief, Plaintiff Danial Floyd was, at all relevant times to this cause, a citizen of the State of Texas, County of Grayson. Therefore, for purposes of diversity jurisdiction under 28 U.S.C § 1332, Plaintiff is a citizen of the State of Texas.

4. That Defendant Zurich American Insurance Company of Illinois is an insurance company licensed to perform business in the State of Montana and in good standing with the Secretary of State of Montana, and has its principal place of business in Schaumburg, Illinois. Therefore, for purposes of diversity jurisdiction

under 28 U.S.C. § 1332, Zurich American Insurance Company of Illinois is a citizen of Illinois.

5. That Defendant Penny Hart was, at all times relevant to this cause, a resident of Yellowstone County, State of Montana. Therefore, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Defendant Penny Hart is citizen of the State of Montana.

6. That both Defendants, Zurich American Insurance Company of Illinois and Penny Hart, are represented by the undersigned counsel and unanimously consent to the removal of this cause.

7. That upon information and belief, the matter in controversy, exclusive of interest and costs, exceeds \$75,000.00, and complete diversity exists between Plaintiff, a citizen of Texas, and Defendants Zurich American Insurance Company of Illinois, a citizen of Illinois, and Penny Hart, a citizen of Montana.

8. That the above Court has jurisdiction over this case under and by virtue of the provisions of 28 U.S.C. § 1332.

9. That Venue is proper in this district under 28 U.S.C. § 1441(a) because the district and division embrace the place where the removed action has been pending.

10. That Defendants will jointly and concurrently give written notice of this Notice of Removal to counsel for Plaintiff and the Montana Thirteenth Judicial

District Court, Yellowstone Country pursuant to Mont. R. Civ. P. 77(e), by which act the above entitled cause is removed from such state district court to the above captioned United States District Court. A copy of this written notice, without attachments, is attached hereto as Exhibit C.

DATED this 22nd day of September, 2017.

By /s/ Kelly J. C. Gallinger

Kelly J. C. Gallinger
BROWN LAW FIRM, P.C.
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2017, a copy of the foregoing was electronically filed and served on the following persons by the following means:

<u>1-3</u>	CM/ECF	_____	Fax
<u>4</u>	Hand Delivery	_____	E-Mail
_____	Mail	_____	Overnight Delivery

1. Clerk of U.S. District Court
2. Paul D. Odegaard
Odegaard Braukmann Law, PLLC
1601 Lewis Avenue, Suite 101
Billings, MT 59102
Attorneys for Plaintiff
3. Paul Toennis
Graves & Toennis, P.C.
2722 Third Avenue North, Suite 301
Billings, MT 59101
Attorneys for Plaintiff
4. Clerk of Yellowstone County District Court
Yellowstone County Courthouse
217 N. 27th Street
Billings, MT 59101

By: /s/ Kelly J. C. Gallinger
Kelly J. C. Gallinger
Attorney for Defendants